**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**LETTERS PATENT APPEAL No. 604 of 2006**
**In**
**SPECIAL CIVIL APPLICATION No. 12124 of 2005**
**with**
**CIVIL APPLICATION No. 10736 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.L.DAVE**

**HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RENUKABEN RASHMIKANT PADIA - Appellant**
**Versus**
**BANK OF MAHARASHTRA THR' CHIEF MANAGER-STAFF & 1 - Respondents**

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**Appearance :**
MR PARESH UPADHYAY for Appellant.
MR INDRAVADAN PARMAR for Respondents.

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**CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**
**and**
**HONOURABLE MR.JUSTICE SHARAD D.DAVE**

**Date : 15/10/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE A.L.DAVE)**

Our attention was drawn by the appellant, by preferring Civil Application No. 10736 of 2007, for fixing date of final hearing of the appeal, towards an order passed by the Supreme Court in Civil Appeal No. 5706 of 2006 (SLP No.9653/2006) dated 11th December, 2006, making following observations:

> "We, therefore, by consent of both the parties, set aside the impugned order dated 28.4.2006 passed in Civil Application No. 3962 of 2006 in Letters Patent Appeal No.604 of 2006 and remit the matter to the High Court with the request to dispose of the Letters Patent Appeal itself on the date fixed by the High Court, namely, 7.2.2007."

On readiness being shown by both the sides to argue the appeal finally, we have heard this matter finally.

2. This appeal arises out of the judgment

rendered in Special Civil Application No. 12124 of 2005 on 31.01.2006 preferred by the present appellant.

2.1 The appellant preferred Special Civil Application invoking Articles 14, 16 & 21 of the Constitution of India, praying for a declaration that she is entitled to get family pension from the respondent-Bank, and for a mandate to the respondent to make payment of family pension with effect from 25.10.2000, along with interest.

3. The facts leading to the institution of the petition can be briefly stated thus :

The petitioner-appellant's husband was working with the respondent-Bank. He joined his service in the year 1976 and continued to work with the Bank till 24.10.2000 when he met with an accidental death. The respondent-Bank by a communication dated 5.10.2004 conveyed to the appellant that the entire past service of her late husband was forfeited on account of his involvement in fraudulent transactions leading to

pecuniary loss to the Bank and, therefore, his family was not entitled to family pension. According to the respondent-Bank, the deceased husband had indulged in fraud on Bank by falsely crediting several amounts into the accounts of his family members and withdrawing the same and thereby had swindled approximately Rs.11,96,940/- while he was in service. According to the respondent-Bank, it was a case of "deemed dismissal" from service. The Bank was, therefore, entitled to recover pecuniary loss suffered by it from the amount receivable by the family of the deceased employee. The appellant is a conscious beneficiary and, therefore, the Bank was entitled to recover the same from the amount receivable by her in the form of gratuity, provident fund, pension etc. The appellant, therefore, approached the Court making the following prayers:

> "(A) declare and hold that the petitioner is entitled to get family pension from the respondent-bank under the provisions of the Bank of Maharashtra (Employees') Pension Regulations 1995, and

(B) direct the authorities of the respondent-bank to make payment of family pension to the petitioner w.e.f.25.10.2000, and

(C) further be pleased to direct the authorities of the respondent-bank to make payment of arrears of family pension, alongwith interest, at the rate, which the Honourable Court may consider as just and proper in the facts and circumstances of the case, and

(D) award the cost of the petition, and

(E) pending admission and final disposal of this petition, the Honourable Court may be pleased to direct the authorities of the respondent-bank to start paying provisional family pension to the petitioner, at the rate, which the Honourable Court may consider as just and proper in the facts and circumstances of the case."

4. After considering the contentions advanced by the rival side, the learned Single Judge ultimately partly allowed the petition and declared that the decision of the respondent-Bank to forfeit past service of late Shri R.R.Padia

(husband of the appellant) was illegal and, therefore, the actions pursuant thereto were set aside. The learned Judge also observed that, consequently, the appellant shall be entitled to the amount of family pension in accordance with the provisions of the Bank of Maharashtra (Employees') Pension Regulations, 1995. The learned Judge also observed that the amounts, which were not legally due from or payable by the late husband of the appellant cannot be recovered from the family pension due to the appellant.

4.1 Looking to the reliefs granted, virtually the petition was fully allowed, and all major reliefs sought were granted. Obviously, the appellant cannot have any legitimate reason to prefer an appeal.

4.2 However, the learned Judge, besides granting the above reliefs in favour of the appellant, also observed that the respondent shall be entitled to effect recovery from the amount of family pension in accordance with the provisions

contained in Regulation 49 of the Bank of Maharashtra (Employees') Pension Regulations, 1995 ["the Regulations" for short]. The learned Judge observed that, after determining the amount of family pension due to the appellant, the respondent shall quantify the amount proposed to be recovered and deducted from the due amount of family pension and furnish details thereof to the appellant to invite objections or representations, if any, from the appellant. After considering such objections or representations, if any, the respondent shall make a final order regarding payment of and recovery from family pension due to the appellant. It was also directed that the procedure shall be completed as expeditiously as possible and, preferably, within a period of two months, and thereafter, if any amount towards arrears of family pension was ordered to be paid to the appellant, such amount shall be paid with interest at the rate of 9% per annum from the date of the petition.

4.3 It is this subsequent direction and observation of the learned Single Judge that has aggrieved the appellant and has prompted this appeal. In order that rival contentions can be properly appreciated, certain undisputed relevant facts may be narrated as under:

4.4 It is not in dispute that during the life time of the deceased husband of the appellant, he had not been served with any show cause notice, no departmental proceeding was initiated against him and that there was no complaint against him. It is also not in dispute that the appellant has not received any kind of payment up-till-now. It is also not in dispute that there is no adjudication on the allegations of fraud, misappropriation and resultant pecuniary loss to the respondent-Bank by the acts of the deceased employee. It is also not in dispute that even provident fund amount has not been paid to the family of the deceased and is adjusted against the alleged dues. The learned Single Judge was of the opinion that the appellant was entitled to

family pension. The learned Single Judge formulated two questions, viz. (i) whether, family pension could be denied to the appellant, and (ii) whether, loss suffered by the respondent can be recovered from the amount of family pension due to the appellant, and ultimately gave his verdict, as narrated above.

5. Learned advocate Mr.Paresh Upadhyay for the appellant submitted that the relief, which is granted to the respondent in the appellant's petition, is beyond the scope of the petition and that it is founded on the facts, which are yet not established. According to Mr.Upadhyay, the relief is granted on an erroneous interpretation of Regulations 48 & 49 of the Regulations. Mr.Upadhyay submitted that whereas Regulation 48 deals with pecuniary loss, Regulation 49 deals with "other recoveries", and considering the scheme of the Regulations, they cannot be considered as the same or synonymous which what is exactly done by the learned Single Judge while accepting the plea of the respondent that

the respondent is entitled to recover pecuniary loss suffered by it as "other recoveries". This stand is taken by the Bank to explain its action of recovering the amount due from the employee on account of pecuniary loss suffered by the Bank because of the alleged fraudulent acts of the employee, without fulfilling the requirements of Regulation 48. Mr.Upadhyay pleaded that apart from the fact that there has been no adjudication, on guilt or otherwise of the deceased, or on grave misconduct of negligence or criminal breach of trust or forgery, as required under Regulation 48(1), there has been total neglect of Regulation 48(2) and Proviso thereto.

5.1 Mr.Upadhyay submitted that Regulation 49 contemplates recovery of bank dues, such as, housing loan, advances, licence fees etc. or recovery of dues to Staff Cooperative Credit Society, which is not the case here, in the sense that the appellant does not dispute the Bank's right to recover Rs.1,71,062.65 ps. under various heads, like house building advance, consumer

loan, festival advance etc., as per Bank's calculations. He submitted that that recovery have been effected by the Bank. He further submitted that now the petitioner/appellant is denied benefits to which she is held to be entitled to for effecting recovery of alleged pecuniary loss as other recoveries, in absence of any adjudication on the question of pecuniary loss. It was submitted that it never was the case of the Bank that pecuniary loss caused to the Bank by deceased husband of the petitioner/appellant was to be or was being recovered as other recoveries contemplated under Regulation 49 of the Regulations.

5.2 Mr.Upadhyaya submitted that by virtue of the order of the learned Single Judge a relief is granted to respondent in the petitioner's petition without any prayer therefor. The relief permitted to stand is such that without any proceedings and opportunity to defend, the deceased husband is held guilty of misconduct and the right of the petitioner which is upheld by

learned Single Judge is taken away or denied. In absence of adjudicating proceedings, the allegation is accepted. The complainant is made the Judge in its own cause. Mr. Upadhyay, therefore, submitted that the learned Single Judge committed an error in granting a relief to the respondent-Bank which was not the subject matter of the petition, which was not even prayed for by the respondent-Bank and therefore, the same may be set aside.

6. The appeal is opposed to by learned advocate Mr. Indravadan Parmar. He submitted that the Bank suffered huge loss at the hands of the petitioner-appellant's husband while he was in service. He vehemently argued that bank money is public money. The `fraudulent transactions' were in the accounts of the appellant and her children and, therefore, the petitioner-appellant cannot plead ignorance to the acts of the appellant's deceased husband. He has drawn our attention to the affidavit sworn-in by Mr.Vishnubhai Rawal, son of Natwarlal Rawal, on 24.9.2005, filed in

reply to the petition, particularly, Paragraphs 3 & 4, to show that the Bank has suffered straight/great financial loss of, approximately, Rs.11,90,000/-. He has drawn our attention to another affidavit sworn in by said Mr.Vishnubhai Rawal on 19.10.2005, stating that irreparable 'pecuniary loss' is caused to the Bank at the hands of the husband of the appellant, who has, by his `fraudulent acts', invited a situation of being awarded punishment of reduction of six increments in the present time-scale, with cumulative effect, and such other different suitable punishments, according to the charges levelled against 5 officers and 2 clerks, while initiating disciplinary action against them. Mr. Parmar has drawn our attention to several judicial pronouncements and pleaded that the appeal may not be entertained.

7. We may, however, record here that learned advocate Mr. Parmar does not dispute the fact that during the life time of the deceased employee, there was no notice, no departmental

proceedings and no complaint against him.

8. It is, undoubtedly, disturbing that a bank employee, if he had really indulged in fraudulent activities as alleged, goes unpunished, but, in absence of initiation of any disciplinary action or proceedings against him and adjudication to the said effect against him, it is a settled principle of law that no punishment can be inflicted. No recovery can also be made in the absence of adjudication, unless there is admission or consent by the other side. In the instant case, undoubtedly, there had been no departmental proceedings against the deceased, there is no finding to the effect that the deceased indulged in fraudulent activities, which resulted into pecuniary loss to the Bank to the extent claimed by the Bank. The respondent-Bank has not taken any action in this regard and has resorted to coercive tactics even to the extent of making recovery from the amount of provident fund of the deceased employee, receivable by his heirs or representatives viz. the appellant.

9. Be that as it may, it has been the consistent case of the respondent-Bank that fraudulent activities of the deceased employee caused pecuniary loss to the Bank. In this regard, if we examine the Regulations of the Bank, Regulation 43 runs as under :

> "The Competent Authority may, be order in writing, withhold or withdrew a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct".

Regulation 48 runs as under :

> "**Recovery of Pecuniary loss caused to the Bank** :(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct

or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service."

Regulation 49 runs as under :

"**Recovery of Bank's dues** : The Bank shall be entitled to recover the dues to the Bank on account of housing loans, advances, licence fees, other recoveries and recoveries due to staff cooperative credit society from the commutation value of the pension or the pension or the family pension."

It is not in dispute that the deceased employee was not adjudicated guilty of grave misconduct of negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service in any departmental or judicial proceedings, and as such, Regulation 43 or 48 will not be attracted. The learned Single Judge has also come to the same conclusion when he observed, "Similarly the provisions of Regulation 48 are also not attracted since there is no question of recovery from pension of any pecuniary loss after any departmental or judicial proceedings where he is found or held to be

guilty of such misconduct". We are in complete agreement with this finding of the learned Single Judge and, therefore, in our view, the learned Single Judge was justified in granting the reliefs, which were granted.

10. However, it appears that during the course of arguments, as observed in Para 4.1 of the judgment in question, a submission was made by the learned advocate for the Bank, by way of an alternative submission that the Bank was entitled to recover the amount of the pecuniary loss as "other recovery" by resorting to Regulation 49, and in support relied on the alleged fictitious entries and transactions allegedly made by the late husband of the appellant, which has been accepted by the learned Judge. It has been the consistent case of the respondent-Bank that it has suffered `pecuniary loss'. It was only before the learned Single Judge, during the course of arguments, that it was contended that recovery can be effected under Regulation 49 as `other recovery'. The said Regulation operates only in

respect of Bank's dues on account of house building advance, festival advance etc. and cannot operate in the area of `pecuniary loss, suffered by the Bank on account of fraudulent acts of an employee, which is the case against the deceased husband of the appellant.

11. Undisputedly, there has been no departmental proceedings, there has been no adjudication or verdict on the question whether the said entries were, in fact, made by the deceased employee or not. The case of the Bank stands on a mere assertion by the Bank, in absence of any verdict from competent authority to that effect, by following due procedure of law. In our view, if Regulation 49 is read, it contemplates recovery of dues to the Bank on account of housing loans, advances, licence fees, dues to the Staff Cooperative Credit Society and the like. In the instant case, such amounts have already been recovered, to which the appellant has not raised any objection here. But, other recoveries sought and permitted to be effected are in the form of

pecuniary loss suffered on account of the alleged fraudulent acts of the deceased employee, about which there is no adjudication from the competent authority. A lot of disputed questions of fact may arise and it would be a matter of evidence as to whether it was the deceased employee, who effected the fraudulent entries and withdrew money as alleged, or could it be somebody else, and unless that has been tried and decided by the competent authority, it is not legal or proper to permit such recovery, under an altogether different provision operating in a different field, viz. Regulation 49. Neither had the appellant nor had her husband any opportunity to defend the allegation of fraudulent acts and recovery is sought to be effected from the family pension, gratuity etc. to which petitioner is held to be entitled to. Such recovery would assume the colour of `punishment' or `penalty' to the appellant, without any departmental proceedings. In our view, therefore, recovery under Regulation 49 could not have been permitted by the learned Single Judge, so also the

consequent subsequent direction while dealing with the petition of the petitioner-appellant.

12. The Appeal, therefore, deserves to be allowed and the same is allowed. That part of the order, which authorises the respondent-Bank to adjust the amount of pecuniary loss, allegedly caused by the fraudulent acts of the appellant's deceased husband, from the amount of family pension payable to the petitioner-appellant, is hereby quashed and set aside. Rest of the order remains undisturbed. No costs.

Order on Civil Application No.3962/2006 :

In view of the fact that the main appeal is heard and disposed of today, this Civil Application stands disposed of without any order.

[A.L.DAVE,J.]

[SHARAD D.DAVE,J.]

(patel)